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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,634	12/02/2003	Andrew J. Callinan	58876US002	4534

32692 7590 01/30/2006

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EXAMINER
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ZIRKER, DANIEL R

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 01/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/725,634

Applicant(s)

CALLINAN ET AL.

Examiner

Daniel Zirker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 1, 4, 7-10, 29, 36 and 37 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Howard, substantially for the reasons set forth in Paragraph No. 5 of Paper No. 083005, together with the following additional observations. More particularly, applicants argue (e.g. page 17, 1<sup>st</sup> complete paragraph) that "the Howard patent is not actually producing microspheres that incorporate a structural cationic charge". However, the Examiner submits that the reference either expressly or inherently discloses applicants' straightforwardly claimed (e.g. claim 1) "cationic microspheres" and also that applicants appear to admit at page 19, lines 6-8 and at page 20, lines 11-13 that the reference discloses microspheres that one of ordinary skill would clearly consider to be "cationic". The fact that these cationic microspheres may be formed in a significantly different manner than those of applicants' invention is patentably irrelevant in view of their broad, chosen claim language.

3. Claims 1-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howard combined with Crandall et al, substantially for the reasons set forth in Paragraph No. 6 of Paper No. 083005, together with the following additional observations. The Examiner disagrees with applicants' contention (Response, page 22, 1<sup>st</sup> complete paragraph) that Crandall et al fails to teach, suggest or disclose a "cationic unsaturated vinyl monomer". Note, e.g. Col 3, lines 43-47 which clearly teaches such a genus of embodiments, which are also believed to

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be capable of being polymerized and thus become part of the microspheres as clearly implied by the aforementioned citation, applicants' comments (e.g. Response, bridging paragraph, pages 22-23) to the contrary notwithstanding. Additionally, as to applicants' comments (response, page 23) regarding the fact that the "vinyl unsaturated additive" does not become polymerized and form part of the microsphere the Examiner respectfully submits that many of applicants' claims (e.g. claim 11) do not require the various polymeric ingredients to be polymerized, and also the fact that Crandall et al has been relied upon (in combination) to make such a polymerized structure obvious under 35 USC 103.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Zirker whose telephone number is

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571-272-1486. The examiner can normally be reached on Monday - Thursday from 8:30 to 6:00. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Daniel Zirker  
Primary Examiner  
Art Unit 1771

A handwritten signature in black ink that reads "Daniel Zirker". The signature is written in a cursive, flowing style.